



Rep. Renée Kosel

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LRB096 20584 RLJ 40799 a

1 AMENDMENT TO SENATE BILL 3749

2 AMENDMENT NO. _____. Amend Senate Bill 3749 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Municipal Code is amended by
5 changing Sections 11-124-5 and 11-139-12 as follows:

6 (65 ILCS 5/11-124-5)

7 Sec. 11-124-5. Acquisition of water systems by eminent
8 domain.

9 (a) In addition to other provisions providing for the
10 acquisition of water systems or water works, whenever a public
11 utility subject to the Public Utilities Act utilizes public
12 property (including, but not limited to, right-of-way) of a
13 municipality for the installation or maintenance of all or part
14 of its water distribution system, the municipality has the
15 right to exercise eminent domain to acquire all or part of the
16 water system, in accordance with this Section. Unless it

1 complies with the provisions set forth in this Section, a
2 municipality is not permitted to acquire by eminent domain that
3 portion of a system located in another incorporated
4 municipality without agreement of that municipality, but this
5 provision shall not prevent the acquisition of that portion of
6 the water system existing within the acquiring municipality.

7 (b) Where a water system that is owned by a public utility
8 (as defined in the Public 16 Utilities Act) provides water to
9 customers located in 2 or more municipalities, the system may
10 be acquired by any ~~either or all~~ of the municipalities by
11 eminent domain ~~if there is in existence an intergovernmental~~
12 ~~agreement between the municipalities served providing for~~
13 ~~acquisition.~~ If the system is to be acquired by more than one
14 municipality, then there must be an intergovernmental
15 agreement in existence between the acquiring municipalities
16 providing for the acquisition.

17 (c) If a water system that is owned by a public utility
18 provides water to customers located in one or more
19 municipalities and also to customers in an unincorporated area
20 and if at least 70% of the customers of the system or portion
21 thereof are located within the municipality or municipalities,
22 then the system, or portion thereof as determined by the
23 corporate authorities, may be acquired, using eminent domain or
24 otherwise, by either a municipality under subsection (a) or an
25 entity created by agreement between municipalities where at
26 least 70% of the customers reside. For the purposes of

1 determining "customers of the system", only retail customers
2 directly billed by the company shall be included in the
3 computation. The number of customers of the system most
4 recently reported to the Illinois Commerce Commission for any
5 calendar year preceding the year a resolution is passed by a
6 municipality or municipalities expressing preliminary intent
7 to purchase the water system or portion thereof shall be
8 presumed to be the total number of customers within the system.
9 The public utility shall provide information relative to the
10 number of customers within each municipality and within the
11 system within 60 days after any such request by a municipality.

12 (d) In the case of acquisition by a municipality or
13 municipalities or a public entity created by law to own or
14 operate a water system under this Section, service and water
15 supply must be provided to persons who are customers of the
16 system on the effective date of this amendatory Act of the 94th
17 General Assembly without discrimination based on whether the
18 customer is located within or outside of the boundaries of the
19 acquiring municipality or municipalities or entity, and a
20 supply contract existing on the effective date of this
21 amendatory Act of the 94th General Assembly must be honored by
22 an acquiring municipality, municipalities, or entity according
23 to the terms so long as the agreement does not conflict with
24 any other existing agreement.

25 (e) For the purposes of this Section, "system" includes all
26 assets reasonably necessary to provide water service to a

1 contiguous or compact geographical service area or to an area
2 served by a common pipeline and include, but are not limited
3 to, interests in real estate, all wells, pipes, treatment
4 plants, pumps and other physical apparatus, data and records of
5 facilities and customers, fire hydrants, equipment, or
6 vehicles and also includes service agreements and obligations
7 derived from use of the assets, whether or not the assets are
8 contiguous to the municipality, municipalities, or entity
9 created for the purpose of owning or operating a water system.

10 (f) Before making a good faith offer, a municipality may
11 pass a resolution of intent to study the feasibility of
12 purchasing or exercising its power of eminent domain to acquire
13 any water system or water works, sewer system or sewer works,
14 or combined water and sewer system or works, or part thereof.
15 Upon the passage of such a resolution, the municipality shall
16 have the right to review and inspect all financial and other
17 records, and both corporeal and incorporeal assets of such
18 utility related to the condition and the operation of the
19 system or works, or part thereof, as part of the study and
20 determination of feasibility of the proposed acquisition by
21 purchase or exercise of the power of eminent domain, and the
22 utility shall make knowledgeable persons who have access to all
23 relevant facts and information regarding the subject system or
24 works available to answer inquiries related to the study and
25 determination.

26 The right to review and inspect shall be upon reasonable

1 notice to the utility, with reasonable inspection and review
2 time limitations and reasonable response times for production,
3 copying, and answer. In addition, the utility may utilize a
4 reasonable security protocol for personnel on the
5 municipality's physical inspection team.

6 In the absence of other agreement, the utility must respond
7 to any notice by the municipality concerning its review and
8 inspection within 21 days after receiving the notice. The
9 review and inspection of the assets of the company shall be
10 over such period of time and carried out in such manner as is
11 reasonable under the circumstances.

12 Information requested that is not privileged or protected
13 from discovery under the Illinois Code of Civil Procedure but
14 is reasonably claimed to be proprietary, including, without
15 limitation, information that constitutes trade secrets or
16 information that involves system security concerns, shall be
17 provided, but shall not be considered a public record and shall
18 be kept confidential by the municipality.

19 In addition, the municipality must, upon request,
20 reimburse the utility for the actual, reasonable costs and
21 expenses, excluding attorneys' fees, incurred by the utility as
22 a result of the municipality's inspection and requests for
23 information. Upon written request, the utility shall issue a
24 statement itemizing, with reasonable detail, the costs and
25 expenses for which reimbursement is sought by the utility.
26 Where such written request for a statement has been made, no

1 payment shall be required until 30 days after receipt of the
2 statement. Such reimbursement by the municipality shall be
3 considered income for purposes of any rate proceeding or other
4 financial request before the Illinois Commerce Commission by
5 the utility.

6 The municipality and the utility shall cooperate to resolve
7 any dispute arising under this subsection. In the event the
8 dispute under this subsection cannot be resolved, either party
9 may request relief from the circuit court in any county in
10 which the water system is located, with the prevailing party to
11 be awarded such relief as the court deems appropriate under the
12 discovery abuse sanctions currently set forth in the Illinois
13 Code of Civil Procedure.

14 The municipality's right to inspect physical assets and
15 records in connection with the purpose of this Section shall
16 not be exercised with respect to any system more than one time
17 during a 5-year period, unless a substantial change in the size
18 of the system or condition of the operating assets of the
19 system has occurred since the previous inspection. Rights under
20 franchise agreements and other agreements or statutory or
21 regulatory provisions are not limited by this Section and are
22 preserved.

23 The passage of time between an inspection of the utilities
24 and physical assets and the making of a good faith offer or
25 initiation of an eminent domain action because of the limit
26 placed on inspections by this subsection shall not be used as a

1 basis for challenging the good faith of any offer or be used as
2 the basis for attacking any appraisal, expert, argument, or
3 position before a court related to an acquisition by purchase
4 or eminent domain.

5 (g) Notwithstanding any other provision of law, the
6 Illinois Commerce Commission has no approval authority of any
7 eminent domain action brought by any governmental entity or
8 combination of such entities to acquire water systems or water
9 works.

10 (h) The provisions of this Section are severable under
11 Section 1.31 of the Statute on Statutes.

12 (i) This Section does not apply to any public utility
13 company that, on January 1, 2006, supplied a total of 70,000 or
14 fewer meter connections in the State unless and until (i) that
15 public utility company receives approval from the Illinois
16 Commerce Commission under Section 7-204 of the Public Utilities
17 Act for the reorganization of the public utility company or
18 (ii) the majority control of the company changes through a
19 stock sale, a sale of assets, a merger (other than an internal
20 reorganization) or otherwise. For the purpose of this Section,
21 "public utility company" means the public utility providing
22 water service and includes any of its corporate parents,
23 subsidiaries, or affiliates possessing a franchised water
24 service in the State.

25 (Source: P.A. 94-1007, eff. 1-1-07.)

1 (65 ILCS 5/11-139-12) (from Ch. 24, par. 11-139-12)

2 Sec. 11-139-12. For the purpose of acquiring,
3 constructing, extending, or improving any combined waterworks
4 and sewerage system under this Division 139, or any property
5 necessary or appropriate therefor, any municipality has the
6 right of eminent domain, as provided by the Eminent Domain Act.

7 The fair cash market value of an existing waterworks and
8 sewerage system, or portion thereof, acquired under this
9 Division 139, which existing system is a special use property,
10 may be determined by considering Section 15 of Article I of the
11 Illinois Constitution, the Eminent Domain Act, and the Uniform
12 Standards of Professional Appraisal Practice and giving due
13 consideration to the income, cost, and market approaches to
14 valuation based on the type and character of the assets being
15 acquired. In making the valuation determination, the
16 historical and projected revenue attributable to the assets,
17 the costs of the assets, and the condition and remaining useful
18 life of the assets may be considered while giving due account
19 to the special use nature of the property as used for water and
20 sewerage purposes. ~~in accordance with the following valuation~~
21 principles.

22 Additionally, in determining the fair cash market value of
23 existing utility facilities, whether real or personal,
24 consideration may be given to the depreciated value of all
25 facilities and fixtures constructed by the utility company and
26 payments made by the utility company in connection with the

1 acquisition or donation of any waterworks or sanitary sewage
2 system.

3 ~~The fair cash market value of existing facilities, whether~~
4 ~~real or personal, may be determined by utilizing the net~~
5 ~~earnings which are attributable to the facilities in question~~
6 ~~for the preceding fiscal year on the date the condemnation~~
7 ~~petition is filed, over the remaining useful life of the~~
8 ~~facilities. Said earnings may be capitalized under an annuity~~
9 ~~capitalization method and discounted to present value. The fair~~
10 ~~cash market value of any extensions, additions or improvements~~
11 ~~of the existing system made subsequent to the date that the~~
12 ~~condemnation petition is filed may be determined by utilizing~~
13 ~~the probable net earnings attributable to the facilities in~~
14 ~~question over the remaining life of the facilities. The~~
15 ~~probable earnings may be capitalized under an annuity~~
16 ~~capitalization method and discounted to present value.~~

17 ~~The value of the land and easements upon which the~~
18 ~~facilities are situated may be determined in accordance with~~
19 ~~the foregoing principles, giving due account to the special use~~
20 ~~of the property for water and sewerage purposes.~~

21 For the purposes of this Section no prior approval of the
22 Illinois Commerce Commission, or any other body having
23 jurisdiction over the existing system, shall be required.

24 (Source: P.A. 94-1055, eff. 1-1-07.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.".